IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.2567 OF 2005

The New India Assurance Co. Ltd. ...Appellant
Vs.
Ashwini Balasaheb Pawar & Ors. ...Respondents

Mr S.M. Vidyarthi for the Appellant.
Mr Tejpal S. Ingale for the Respondent Nos.1 to 4.

CORAM : A. S. OKA, J.
DATE : MARCH 28, 2006.

P.C.:

1. On the last date the Appeal was heard finally. The Appeal is by the insurer of the vehicle involved in the accident. The Respondent Nos.1 to 4 are the original claimants in a Petition under section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the said Act of 1988). According to the case of the original claimants the deceased Balasaheb Pawar was travelling by his moped on 11th February, 1998. After attending the duty at Jaisinghpur, he was returning to his residence at Alhilya Nagar, Kupwad. According to the case of the claimants, the decesed was travelling slowly by left side of the road. When he came near circuit house cross-road, ambassador vehicle which is insured with the Appellant and which is owned by the original opponent No.1 came from the

wrong side and gave dash to the moped on which the deceased was travelling. On the same day, deceased succumbed to the injuries sustained in the accident. The Tribunal awarded compensation of Rs.3,71,000/- inclusive of no fault liability of Rs.50,000/- with interest at the rate of 12 per cent per annum from the date of filing of the Claim Petition till realisation.

2. The learned Counsel appearing for the Appellant- Insurance Company pointed out that Appeal preferred at the instance of the Appellant-Company is maintainable. The learned Counsel submitted that the multiplier applied by the Tribunal is on the higher side. He submitted that interest could not have been awarded at the rate of 12 per cent per annum. The learned Counsel for the Appellant placed reliance on the decisions of the Apex Court reported in **2005 ACJ 1441 (Tamil Nadu State Transport Corporation Ltd.Vs. S. Rajapriya & Ors.), 2006 SCJ 423 (Managing Director, Tamil Nadu State Transport Corporation Ltd. Vs. K.I. Bindu and Ors.) and 2001 ACJ 428 (Kaushnuma Begum & Ors. Vs. New India Assurance Co. Ltd. & Ors.).**

3. The learned Counsel appearing for the original claimants submitted that the multiplier applied by the Tribunal is correct in view of the decision of the Apex Court reported in (2005) 12 SCC 190 (Kanhaiyalal Kataria & Ors. Vs. Mukul Chaturvedi & Ors.). He submitted that the Apex Court applied multiplier of 17 in case of a deceased who was 32 years old. He submitted that multiplier applied by the Tribunal of fourteen cannot be interferred with in view of the evidence on record.

4. I have considered the submissions made by the learned Counsel appearing for the parties. The principles goverening proper multiplier to be applied in case where multiplier method is adopted is considered by the Apex Court in the case of Tamil Nadu State Transport Corporation (Supra). The Apex Court has considered the principles laid down in its earlier decisions. The same principles are also discussed in case of S. Rajapriya and Ors. (Supra). In the case of S. Rajapriya & Ors., the Apex Court observed in paragraph No.17 as under:

"17. In Susamma Thomas Case, 1994 ACJ 1 (SC), it was noted that the normal rate of interest was about 10 per cent and accordingly the multiplier was worked out. As the interest rate is on the decline, the multiplier has to consequentially be raised. Therefore, instead of 16 the multiplier of 18 as adopeted in Trilok Chandra's case, 1996 ACJ 831 (SC), appears to be appropriate. In fact in Trilok Chandra's case (supra), after reference to Second Schedule to the Act, it was noticed that the same suffers from many defects. It was pointed out that the same is to serve as a guide, but cannot be said to be invariable ready-reckoner. **However, the appropriate highest multiplier was held to be 18. The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian citizen starts independently earning and the lowest would be in respect of a person in the age group of 60 to 70, which is the normal retirement age."**(Emphasis supplied)

5. In the case before the Apex Court the age of deceased was 38 years. The Apex Court held that multiplier of 16 adopted by the Claims Tribunal was improper and proper multiplier will be 12. In the other decision of the Supreme Court in the case of Managing Director of Tamil Nadu State Corporation Ltd.(Supra) the deceased was of the age of 34 years. The Apex Court applied multiplier of 13. In view of what is held by the Apex Court in the aforesaid decision, in the present case multiplier of 14 could not have been applied as the age of the deceased was 41 years. Considering the fact that the Apex Court has applied multiplier of 13 in case of deceased of 34 years of age and multiplier of 12 in case of deceased of 38 years of age, the multiplier of 11 deserves to be applied in this case. Reliance placed on the two decisions of the Apex Court by the Advocate for the Respondent No.1 in the case of Kanhaiyalal Kataria & Ors. (Supra) as well as in the case of Chellammal & Ors. Vs. Kailasma & Anr. reported in (2005) 11 Supreme Court Cases Page 387 will not help the original claimant as the Apex Court has decided the

said cases in the peculiar facts of the case before it. In the other two cases which are referred to in earlier part of this paragraph, the Apex Court has considered the principles governing applicability of appropriate multiplier and law on this point has been laid down.

6. The learned Counsel appearing for the Appellants had submitted placing the reliance on the decision of the Apex Court in the case of S.Rajapriay (Supra) that interest at the rate of 7.5% per annum ought to have been awarded. In this connection, it will be necessary to refer to the decision of the Apex Court in the case reported in 2003 (3) Supreme Court Cases Page 148 (Abati Bezbaruah Vs. Dy. Director General, Geological Survey of India & Anr.). The Apex Court following the decision in the case of Kaushnuma Begum & Ors. (Supra) held that interest at the rate of 9 per cent should be awarded considering the reduction in the rates of interest. Same is the view taken by the Apex Court in the case of Kaushnuma Begam (Supra). Considering the facts and circumstances of the case, in the present case, interest at the rate of

nine per cent ought to have been awarded as the accident is of the year 1998.

7. After making necessary deduction out of personal expenditure, the Tribunal has taken multiplicand at Rs.24,000/-. Applying the multiplier of 11, the compensation amount will be Rs.2,64,000/-. To this usual amount of Rs.15,000/- will have to be added. The total compensation payable will be Rs.2,80,000/- inclusive of amount paid under no fault liability. The Tribunal has awarded compensation of Rs.5000/- on account of damage to the moped. The said amount is awarded only on the ground that it was sold at the price of Rs.3000/-. In absence of any material on record to show as to what was the market value of the moped at the time of accident, compensation on the said count could not have been awarded.

8. Hence, I pass the following order:

(i) The impugned Judgment and Award is modified. The operative part of the Judgment and Award of the Tribunal will now be as under:

. "The Claim Petition is hereby partly allowed with proportionate costs. The opponent Nos.1 to 3 shall jointly and severally, to pay amount of Rs.2,80,000/- (inclusive of Rs.50,000/- towards no fault liability) to the Applicants with interest thereon at the rate of nine per cent per annum on the said amount from 15th April, 1998 till the realisation of amount."

(ii) The learned Member of the Tribunal will pass appropriate order for distribution of the said amount amongst the claimants and for investment, if any, in accordance with the settled principles of law.

(iii) If any excess amount is deposited by the Appellant-Company, the Tribunal will permit the Appellant to withdraw the balance amount after making payment to the claimants.

(iv) There will be no orders as to costs in this Appeal.

(v) The sum of Rs.25,000/- deposited by the Appellant in this Court will be tranferred to the concerned Tribunal.

JUDGE